

SEP 8 1984

ALEXANDER L. STEVENS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

GOULD, INC. and FIRST TRUST COMPANY
OF ST. PAUL, MINNESOTA,

Petitioners,

v.

ROBERT J. ADAMS, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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September 6, 1984

QUESTION PRESENTED FOR REVIEW

Whether the six month period of limitations which this Court held to govern actions for alleged breach of a union's duty of fair representation—*Del Costello v. Teamsters*, — U.S. —, 103 S. Ct. 2281 (1983)—may be ignored solely because the claims sought to be asserted involve a union-negotiated pension agreement.

PARTIES BELOW

Pursuant to Rule 21 of this Court, the following individuals were parties below:

ROBERT J. ADAMS, MERREDNA T. BUCKLEY, WILLIAM J. CALLOWAY, JAMES JOSEPH CONNELL, ANTHONY MICHAEL COSELLA, JOHN R. COOK, ANNE CROWLEY, on behalf of the Estate of WILLIAM J. CROWLEY, Deceased, KATHRYN M. CULLEN, ANGELINA A. DICARLO, ROCCO DELGRAMMASTRO, KATHLEEN DIEHL, as Executrix, of the State of JOHN M. DILLENSCHNEIDER, Deceased, WANDA A. DOMAROTSKY, FRANK A. DREGAR, ROBERT J. EGY, AMANDA FAY, MARTHA FLINN, THOMAS E. FLOOD, CORNELIUS FRAZIER, JR., MARY GERACE, ROSE T. GUOKAS, JOHN GUY, MARY F. HABINA, JAMES HICKMAN, JOHN HUDSON, ROBERT H. JONES, PEARL KELLY, JOSEPH J. KLEIN, ELIZABETH D. LINDER, AUGUSTINE MARUCCI, JAMES MCGOWAN, ELIZABETH A. McNALLY, JOHN MORRIS, JOHN MUMBOWER, ANNA M. MYERS, AGNES M. MYERS, JOHN A. NEFF, RUTH O'DONNELL, GRACE MARY PAPALA, ANNA PETRICCIONE, RICHARD M. PHILLIPS, RUSSELL RALLS, FLORENCE RAYSICK, DANIEL J. RONAU, BERNARD C. RUSSELL, JOHN V. RUSSELL, MARGARET RUSSELL, ANTHONY SANTOLERI, WALTER J. STANOWITCH, MADELINE T. STEIN, JOHN F. STEINMETZ, BEATRICE L. STILLWELL, MARIE SMITH, NANCY SWALLOW, MARION THOMPSON, WILLIAM J. WATTS, ANTOINETTE W. WEISS, CLIFFORD W. WILLIAMS, ROBERT WILLIAMS, JAMES C. WOLLNER, FRANK UMSTETTER, MARIE VENTI, JAMES C. WILLNER, BRIDGET BARLOW. The Pension Benefit Guaranty Corporation was a party earlier in these proceedings.

Pursuant to Rule 28.1 of the Rules of the Court, the following is a listing naming all parent companies, subsidiaries (except wholly-owned subsidiaries), and affiliates of Petitioner Gould, Inc. and First Trust Company of St. Paul, Minnesota.

Certification of Parent Companies and
Affiliates (except wholly-owned subsidiaries)
Parent Company—Gould, Inc. (a Petitioner herein)
Affiliates:

<u>Name</u>	<u>Place of Incorporation</u>
AMI Liegenschaftsverwaltungs-Gesellschaft m.b.h.	Austria
AMI Micro-systems GmbH.....	West Germany
AMI Microsystems, S.A.R.L.	France
AMI Microsystems, S.R.L.	Italy
Austria Microsysteme International Gesellschaft M.B.H.	Austria
Gould H.B. Medical Products Ltd.	Japan
Compagnie Francaise d'Electro-Chimi ..	France
Accumulateur Chargeur Dary.....	France
Compagnie Francaise d'Accumulateurs Electriques.....	France
Outarex S.A.R.L.	France
SIDACS.A.R.L.	France
S.I.D.M.A.P.	France
Societe Nouvelle A.M.B.S.A.R.L.....	France
Nikko Gould Foil Company, Limited	Japan
Phoenix Y-M Corp.	New Hampshire

Parent Company—First Bank System, Inc.

Subsidiary— First Trust Company of St. Paul, Minnesota
(a Petitioner herein)*

* First Trust serves as trustee of various trusts which hold stock as part of their corpuses, and as such has or may hold control over various corporations and affiliates. All such stock is held solely as an incident to First Trust's trust powers. First Trust therefore disclaims beneficial ownership with respect to same.

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PETITION FOR WRIT OF CERTIORARI

Petitioners, Gould, Inc. ("Gould") and First Trust Company of St. Paul, Minnesota ("First Trust") petition for a Writ of Certiorari to review the decision and judgment of the United States Court of Appeals for the Third Circuit entered in this case on June 28, 1984.

CITATIONS TO OPINIONS BELOW

The opinion of the Court of Appeals for the Third Circuit is reproduced herein as Appendix A, references thereto will be made as "A ____." The prior opinion of the Court of Appeals for the Third Circuit in this case is reported at 687 F.2d 27 (3d

Cir. 1982), *cert. denied*, 105 S. Ct. 1777 (1983), and is reproduced herein as Appendix B; references thereto will be made as "B ____."

JURISDICTION

Respondents sought review of a decision by the United States District Court for the Eastern District of Pennsylvania, before the United States Court of Appeals for the Third Circuit. The opinion and judgment of the Court of Appeals was entered on June 28, 1984. On July 11, 1984, Petitioners filed a timely Petition for Rehearing and suggestion for Rehearing *en banc* which was denied on July 25, 1984 (Appendix C). This Petition for Certiorari was filed within 90 days of the denial of the Petition for Rehearing in accordance with the requirements of 28 U.S.C. § 2101(c). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The statutory provisions involved are Sections 10(b) and 301 of the Labor-Management Relations Act, 29 U.S.C. §§ 160(b) and 185. Those provisions are reproduced herein as Appendix D.

STATEMENT OF THE CASE

This litigation was commenced July 13, 1978. Plaintiffs alleged that Gould was refusing to pay them certain retirement benefits, that such refusal violated terms of a collective bargaining agreement negotiated by their Union (United Automobile, Aerospace and Agricultural Implement Workers of America,

"UAW"), and that UAW had breached its duty of fair representation relative to the matter.¹

Gould and UAW defended on the ground that the suit raised issues identical to those raised and resolved via a prior grievance-arbitration proceeding and subsequent settlement agreement; the suit thus was barred. Additionally, the defendants asserted that any challenge to the results of such arbitration/settlement was time-barred. (The arbitration award was rendered in November, 1975, the settlement was signed and dated March 15, 1977, or 32 months and 16 months, respectively, prior to the date on which this action was filed.)

Thereafter Plaintiffs voluntarily removed the duty of fair representation claim and dismissed UAW from the action by amended complaint filed January 31, 1979. Gould's motion for summary judgment based on the prior arbitration and settlement agreement eventually was granted pursuant to order of the Third Circuit Court of Appeals in *Adams, et al. v. Gould, Inc., et al.*, 687 F.2d 27 (3d Cir. 1982), *cert. denied*, 103 S. Ct. 1777 (1983) (Appendix B herein). The Third Circuit did not then pass on the time-bar question, holding that the prior arbitration/settlement agreement so clearly barred further litigation of the matter that the limitations question need not be addressed (B 13b).

Plaintiffs then moved the District Court for leave to file a second amended complaint reasserting the duty of fair representation claim and casting the action in the form described in *Vaca v. Sipes*, 386 U.S. 171, 87 S. Ct. 903 (1967) and *Hines v.*

¹ First Trust was named defendant as trustee of funds allocated to the Gould-UAW pension agreement. The Pension Benefit Guarantee Corporation ("PBGC"), created by Congress to guarantee pension benefits under the Employee Retirement Income Security Act, *as amended*, 29 U.S.C. § 1001a *et seq.* (1982 Supp.) (hereinafter "ERISA"), was also a named defendant. PBGC later was dismissed on motion. That dismissal is not part of this appeal.

Anchor Motor Freight, 424 U.S. 554, 96 S. Ct. 1048 (1976). The proposed amended action would, if allowed, assert that UAW had breached its duty to plaintiffs by the manner in which it agreed to settle the prior dispute following issuance of the arbitration award and that plaintiffs therefore are free to sue Gould directly and without regard to that settlement.²

The district court, without opinion, denied the motion to amend. On appeal, the Third Circuit reversed (A 26a). The appeals court held that:

- a) The proposed amended action clearly was of the type described by *Vaca v. Sipes*, *supra*, and *Hines v. Anchor Motor Freight*, *supra*;
- b) The Supreme Court had ruled in *Del Costello v. Teamsters*, ____ U.S. ____, 103 S. Ct. 2281 (1983) that such actions are to be governed by a six-month

² Plaintiffs, among others, were laid off when Gould was forced by economic difficulties to close the piston ring manufacturing plant where they had worked. UAW, on their behalf, and on behalf of all other employees, filed a contract grievance asserting that Gould's action triggered an obligation to fully fund the negotiated pension plan. The grievance was submitted to binding arbitration. The arbitrator ruled that Gould had no such obligation under terms of the agreement. However, the arbitrator further held that Gould was liable for some additional funding in relation to certain actuarially-calculated contributions made to the plan in prior years. Actuaries employed by Gould and UAW calculated the liability to be approximately \$580,000, and determined the degree by which each plan participant's benefit would be augmented thereby. Using the actuaries' figures, the parties agreed that Gould would pay such participants the additional benefit amounts directly, that Gould would provide the UAW with a bond to secure payment, and that the matter would thus be resolved for all purposes. Plaintiffs, because of their relative age and seniority among all the other pension plan participants, and amount of money available, did not gain anything as a result of the arbitration award and settlement agreement.

period of limitations, derived from Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b) (1976) (hereinafter "NLRA");

- c) If *Del Costello* applies, the proposed action would have to be dismissed as untimely; but that
- d) *Del Costello* does not apply because the underlying contract claim has to do with retirement benefits and, therefore, a three-year limitations period derived from 29 U.S.C. § 1113(a)(2) was more appropriate.

(A 16a-19a).

Gould and First Trust were unsuccessful in seeking rehearing and hereby petition this Court for a *writ of certiorari* to review the Third Circuit's order concerning the *Del Costello* limitations period issue.

REASON'S FOR GRANTING THE WRIT

REJECTION OF THE *DEL COSTELLO* SIX-MONTH LIMITATIONS PERIOD BY THE COURT BELOW ESTABLISHES A CLEAR CONFLICT WITH THIS COURT AND AMONG THE CIRCUITS CONCERNING AN IMPORTANT ISSUE ARISING UNDER FEDERAL LABOR LAW

A. The Decision Unreasonably Conflicts With Decisions Of This Court

Prompt resolution of disputes arising under collectively-bargained labor agreements is a cornerstone of the federal policy regarding union-management relationships. Finality of such resolutions is crucial to success of that policy. The need for a clear time limit to govern the filing of actions brought to challenge union resolution of labor disputes is therefore of vital significance to the thousands of such relationships existing across the nation.

This Court, in *Del Costello v. Teamsters, supra*, recognized that need for certainty. It therefore held that actions brought under the *Vaca v. Sipes* and *Hines* theory—i.e., actions predicated upon alleged breach of a union's duty of fair representation—were to be deemed governed by a six-month limitations period derived from Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b).

The *Del Costello* ruling focused on the duty of fair representation aspect of the *Vaca* and *Hines* types of actions, and not upon the contract nature of the underlying claims. Such focus plainly accords with federal labor policy which encourages joint resolution of labor disputes without intending to dictate the terms thereof. Thus, the labor policy holds, in effect, that a union is indeed vested with authority to resolve disputes on whatever terms and by whatever means they deem appropriate; that such resolutions are final and binding on those represented by the union; and that only when a union is found to have breached its duty of fair representation may individual workers assert claims independently. By the *Del Costello* decision, this Court struck a workable balance between federal labor policy and individual worker interests and thus ended years of uncertainty marked by application of limitations periods ranging from a few days to ten years. *Del Costello, supra*, ____ U.S. at ____, 103 S. Ct. at 2292-94.

We respectfully submit that the Third Circuit's refusal to apply the *Del Costello* rule to this case is plain error which should be reversed. It is error because it shifts focus from the duty of fair representation question to the contract claim aspect of the action. It should be reversed because the effect of the decision will be to reintroduce much if not all of the uncertainty and lack of uniformity which marked the pre-*Del Costello*

period.³ Unions by law are vested with authority to represent workers regarding not only matters of shop discipline and minor seniority disputes but also a vast number of other employment matters ranging from job security to plant closings and from rest periods to retirement, insurance and many other benefits. If the time by which a union's resolution of disputes is to be regarded as final depends on the nature of the issue, rather than the nature of the union's discharge of its duty of representation, the *Del Costello* decision will have been rendered essentially meaningless.

We therefore ask that the Court grant the writ in order to reaffirm *Del Costello*.

B. The Third Circuit's Decision Conflicts With Decisions Of Other Courts Of Appeal

The Third Circuit's ruling that the limitations period governing a duty of fair-representation action may vary according to the nature of the underlying contract claim is directly

³ The Third Circuit justifies returning the issue resolved by the court in *Del Costello* to the realm of uncertainty and confusion by relying on its contention that, in this case, there is a second federal statutory period "*arguably more appropriate*," namely the period derived from ERISA. The court then balances competing policy interests in determining whether to apply *Del Costello* or to choose a longer statutory period. It is submitted that the court's analysis is wrong and that its decision should be reversed for several reasons. First, the Supreme Court in *Del Costello* also chose between competing "*arguably appropriate statutes*." The court struck the balance and chose the six-month limitation period under the NLRA based upon the same policy considerations reviewed by the Third Circuit. The Third Circuit, simply stated, apparently does not like the conclusion reached by the Supreme Court. Secondly, the policy determination relied upon by the Third Circuit—namely its view of the need for "speed and finality" in the instant case in comparison apparently to its view for the need for "speed and finality" in the myriad of other cases which may eventually come before it introduces a test sure to create more confusion and uncertainty in the law than existed even before *Del Costello*.

contrary to the Sixth Circuit's decision in *Badon v. General Motors Corp.*, 679 F.2d 93 (6th Cir.1982). The court there held that an individual worker's suit for recovery of pension benefits under a collective bargaining agreement which his union allegedly failed or refused to enforce was governed by the six-month limitations period of LMRA Section 10(b), noting:

The purpose of an employee's Section 301 lawsuit . . . is to set aside a final and binding decision reached pursuant to the terms of a collectively bargained agreement. Again, although the underlying claim looks to a violation of the employment contract, the focus in the first instance challenges the process by which a labor dispute was privately settled. . . . This is our primary concern. The substance of the Section 301 claim will be heard in federal court only if the internal dispute resolution process has broken down. Otherwise the interests of the employer and union are paramount.

....

[We] conclude that the most appropriate statute of limitations under these circumstances is the six-month period found at Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b).

679 F.2d at 97, 99.

The Third Circuit's decision in this case also conflicts with *Jenkins v. Local 705 Teamsters*, 713 F.2d 247 (7th Cir. 1983), another pension benefits case. There, the Seventh Circuit defined the action as one exclusively on contract rather than one predicated on *Vaca* and *Hines* and, therefore, concluded that *Del Costello* was inapplicable. 713 F.2d at 253 n.7. Indeed, the Third Circuit's decision here is inconsistent with its own decisions in other cases where the *Del Costello* rule has been applied even to pure contract cases.⁴ E.g., *Federation of Unions v. Westinghouse*, 736 F.2d 896 (3d Cir. 1984).

⁴ The case now before this Court, by contrast, was found to be a pure *Vaca/Hines* suit by the Third Circuit.

In short, the Third Circuit's decision not only conflicts with *Del Costello* but with decisions of other circuits as well. If allowed to stand, the decision will result in there being a different limitations period within the Third Circuit than elsewhere and such period will vary even within the Third Circuit depending on the nature of the contract claim. The lack of uniformity thus created will only serve to compromise federal labor policy by introducing needless uncertainty respecting the finality of labor-management dispute resolutions.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that a Writ of Certiorari be issued to review the judgment and opinion of the Third Circuit.

Respectfully submitted,

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By _____
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Respectfully submitted,

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Appendix A

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Appendix B

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Appendix D

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